

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATURAL GROCERS; CITIZENS FOR GMO
LABELING; LABEL GMOS; RURAL
VERMONT; GOOD EARTH NATURAL
FOODS; PUGET CONSUMERS CO-OP;
CENTER FOR FOOD SAFETY; NATIONAL
ORGANIC COALITION,

Plaintiffs-Appellants,

v.

THOMAS VILSACK, Secretary of the United
States Department of Agriculture; BRUCE
SUMMERS, Administrator of the Agricultural
Marketing Services; UNITED STATES
DEPARTMENT OF AGRICULTURE,

Defendants-Appellees,

AMERICAN FARM BUREAU FEDERATION;
UNITED STATES BEET SUGAR
ASSOCIATION; AMERICAN SUGARBEET
GROWERS ASSOCIATION,

Intervenor-Defendants-Appellees.

No. 22-16770

UNOPPOSED MOTION FOR A 29-DAY EXTENSION

The government respectfully requests a 29-day extension of time, to and including March 1, 2024, in which to file the government's responsive brief. This motion is unopposed. In support of this motion, counsel state as follows:

1. This appeal arises from plaintiffs’ challenge to Department of Agriculture rules governing bioengineered food disclosure standards. Plaintiffs contend that the rules are arbitrary and capricious and inconsistent with the governing statute. (Plaintiffs also previously contended but have now abandoned several constitutional claims.) On September 13, 2022, the district court vacated one portion of the regulations and remanded to the agency without vacatur, and the district court otherwise ruled for the government.

2. Following a 60-day extension of time to file the opening brief as well as further proceedings before the district court about whether the district court had issued a final, appealable judgment, plaintiffs filed their opening brief on September 5, 2023. Following two extensions, the government’s and intervenors’ responsive briefs are currently due on February 1, 2024.

3. The government respectfully requests a further 29-day extension for the appellees to file their responsive briefs, to and including March 1, 2024. The requested extension is necessary to ensure adequate time to prepare and file the government’s brief. Plaintiffs’ opening brief raises a number of issues that involve a complex statutory scheme and voluminous administrative record. Counsel with primary responsibility for preparing the government’s brief has been recovering from a case of COVID-19 followed by a “rebound” COVID-19 infection that resulted in effects lasting past the infection and significantly interfered with his ability to work. He also had a strep infection, time consuming family obligations, and a number of deadlines

and other work obligations that are making it difficult to prepare and file a brief under the present schedule, including a number of internal or otherwise non-public deadlines related to pending matters. *See, e.g., Stirrup v. Biden*, No. 23-5094 (D.C. Cir.) (response brief due January 26, 2024, on extension); *United States v. California Stem Cell Treatment Center*, No. 22-56014 (9th Cir.) (oral argument scheduled for February 7, 2024).

Additionally, counsel with supervisory responsibility for the government's brief had and has a number of other pending deadlines. *See, e.g., United States v. King County*, No. 23-35362 (9th Cir.) (response brief filed January 12, as extended); *National Assoc. for Gun Rights v. Garland*, No. 23-11138 (5th Cir.) (opening brief filed January 16, as extended); *Cigar Association of America v. FDA*, No. 23-5220 (D.C. Cir.) (opening brief due January 31, as extended); *American First Legal Foundation v. USDA*, No. 23-5173 (D.C. Cir.) (response brief due February 2, as extended); *Ascent Pharmaceuticals, Inc. v. DEA*, No. 23-7246 (2d Cir.) (response brief due February 13, as extended); *Crowley Government Services, Inc. v. GSA*, No. 23-5183 (D.C. Cir.) (response brief due February 15); *Fabrizius v. USDA*, No. 23-9570 (10th Cir.) (response brief due February 15); *Human Rights Center v. Park Police*, No. 23-5236 (D.C. Cir.) (response brief due February 23).

4. Undersigned counsel represent that they have exercised diligence, they intend to file the brief within the time requested, and the court reporter is not in default.

5. The government has contacted counsel for the plaintiffs-appellants and intervenor-defendants-appellees, who represent that they do not oppose this motion.

6. I declare pursuant to 28 U.S.C. § 1746 and Ninth Circuit Rule 31-2.2 that the foregoing is true and correct.

CONCLUSION

For the foregoing reasons, the Court should extend the deadline to file the responsive brief by 29 days, to and including March 1, 2024.

Respectfully submitted,

MARK B. STERN

s/Adam Jed

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JANUARY 2024

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on January 17, 2024, I filed and served the foregoing by using the appellate CM/ECF system.

/s/ Adam Jed
Adam C. Jed

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 583 words according to the count of Microsoft Word.

/s/ Adam Jed
Adam C. Jed